

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

OSCAR VALDEZ-SALAZAR,  
  
Petitioner,  
  
vs.  
  
UNITED STATES OF AMERICA,  
  
Respondent.

CASE NOS. 11-CV-2134 BEN  
11-CR-1439 BEN

**ORDER DENYING  
28 U.S.C. § 2255 MOTION**

Petitioner Oscar Valdez-Salazar moves pursuant to 28 U.S.C. § 2255 for a reduction in his sentence based on his alien status and challenges Bureau of Prisons' policies which preclude him from participating in certain pre-release programs. (Docket No. 28.) Both because he waived the right to challenge his sentence and because his Equal Protection argument lacks merit, the Court **DENIES** the Motion.

**DISCUSSION**

**I. WAIVER**

The Ninth Circuit recognizes strong public policy considerations justifying the enforcement of a defendant's waiver of his right to appeal or collaterally attack a judgment. *United States v. Novarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990). Waivers play an important role in the plea bargaining process and help ensure finality. *Id.* at 322. Generally, courts enforce a defendant's waiver of his right to appeal, as long as the waiver was "knowingly and voluntarily made" and "encompasses the defendant's right to appeal on the grounds claimed on appeal." *United States v. Nunez*, 223 F.3d

1 956, 958 (9th Cir. 2000) (quoting *United States v. Martinez*, 143 F.3d 1266, 1270-71 (9th Cir. 1998)).

2 Petitioner waived his right to collaterally attack his sentence in his plea agreement. Plea  
3 Agreement (Docket No. 20) ¶ 11. The plea agreement states, “[i]n exchange for the Government’s  
4 concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal  
5 or to collaterally attack the guilty plea, conviction and *sentence*.” *Id.* (emphasis added). Petitioner’s  
6 knowing and voluntary waiver of his right to collaterally attack his sentence requires denial of his  
7 § 2255 motion.

## 8 II. EQUAL PROTECTION

9 Petitioner filed the present motion under 28 U.S.C. § 2255, but his Equal Protection challenge  
10 to the constitutionality of certain Bureau of Prisons’ policies is better construed as a challenge to the  
11 manner in which his sentence is being executed under 28 U.S.C. § 2241. *See Hernandez v. Campbell*,  
12 204 F.3d 861, 864 (9th Cir. 2000) (per curiam) (instructing that petitions challenging the “manner,  
13 location or conditions of a sentence’s execution must be brought pursuant to § 2241”); *see also*  
14 *Montano-Figuero v. Crabtree*, 162 F.3d 548, 549 (9th Cir. 1998) (illustrating that challenges to Bureau  
15 of Prisons’ policies are challenges to the execution of an inmate’s sentence). Construing his motion  
16 liberally, the Court considers Petitioner’s Equal Protection claim under 28 U.S.C. § 2241. *See Zichko*  
17 *v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001) (noting a court’s “duty to construe pro se pleadings  
18 liberally”).

19 Petitioner claims that Bureau of Prisons’ policies that prevent him from participating in certain  
20 programs due to his alien status violate his right to Equal Protection. However, Bureau of Prisons  
21 policies preventing deportable aliens from participating in certain programs survive constitutional  
22 challenge. *Cf. McLean v. Crabtree*, 173 F.3d 1176, 1186 (9th Cir. 1999) (finding BOP exclusion of  
23 prisoners with detainers, including INS detainers, from community-based program based on  
24 petitioners’ alien status did not violate Equal Protection).

25 Additionally, a number of district courts have also found that policies preventing alien  
26 prisoners from participating in certain pre-release programs are also justified because the purpose of  
27 the program — helping prisoners reenter the community after serving their sentence — is not advanced  
28 in the case of prisoners who will be deported upon release. *See Lizarraga-Lopez v. United States*, 89

1 F. Supp. 2d 1166, 1169-70 (S.D. Cal. 2000) (upholding deportable alien's ineligibility for community  
2 confinement); *United States v. Rodas-Jacome*, No. 06-CV-1481, 2007 WL 1231630, at \*4 (S.D. Cal.  
3 Apr. 24, 2007) (upholding restrictions for alien prisoners to obtain "good time" credits in rehabilitation  
4 programs). Because deportable alien prisoners pose a greater flight risk and the public policy  
5 justifications for pre-release programs are inapplicable, the challenged policies survive constitutional  
6 scrutiny and Petitioner's Equal Protection claim fails. The Court also denies relief under § 2241.

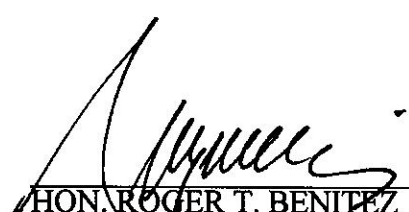
7 The Court **DENIES** a certificate of appealability because the issues are not debatable among  
8 jurists of reason and there are no questions adequate to deserve encouragement.

9 **CONCLUSION**

10 Petitioner's motion is **DENIED**. The Clerk shall close case number 11-CV-2134 BEN.

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12 **IT IS SO ORDERED.**

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14 DATED: November 15, 2011

15   
16 HON. ROGER T. BENITEZ  
17 United States District Court Judge  
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